

FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

What is Financial Responsibility?

Under Federal and State law, owners and/or operators of regulated petroleum underground storage tanks (USTs) must demonstrate they have the financial resources available to pay for the costs of cleanups and third party lawsuits in the event of a release from their tanks. The financial responsibility requirements fall into two categories, “per occurrence” and “annual aggregate.” The per occurrence financial responsibility amount means the amount of money that must be available to pay the costs from one occurrence of a leaking UST. In Virginia, per occurrence responsibilities are split further into corrective action amounts (to cover cleanup activities) and third party liability amounts (to cover the cost of third party lawsuits for bodily injury or property damage caused by a petroleum release). The annual aggregate financial responsibility amount is the total amount of financial responsibility an owner/operator must demonstrate to cover leaks that may occur in one year.

UST Financial Responsibility Requirements			
Annual Throughput (gallons)	Corrective Action (per occurrence)	Third Party Liability (per occurrence)	Annual Aggregate
600,000 or less	\$5,000	\$15,000	\$20,000
600,001-1.2 million	\$10,000	\$30,000	\$40,000
1,200,001-1.8 million	\$20,000	\$60,000	\$80,000
1,800,001-2.4 million	\$30,000	\$120,000	\$150,000
Over 2.4 million	\$50,000	\$150,000	\$200,000

How Much Financial Responsibility Am I Required to Demonstrate?

Most UST owners/operators (e.g., petroleum marketers with between 1 and 100 tanks) are required to demonstrate \$1,000,000 per occurrence and \$1,000,000 annual aggregate. In Virginia, however, the Virginia Petroleum Storage Tank Fund (the Fund) has been established, in part, to offset the cost of demonstrating financial responsibility, making it easier for owners/operators to satisfy the requirements. As a result, the amount of financial responsibility an owner/operator must demonstrate

for tanks owned and/or operated within the Commonwealth of Virginia is reduced significantly. Demonstration amounts are based upon the annual throughput of petroleum through all regulated USTs owned and/or

operated in the Commonwealth of Virginia. The specific financial responsibility requirements are illustrated in the table above.

How Do I Demonstrate Financial Responsibility?

Owners/operators may choose from six different financial assurance mechanisms to demonstrate financial assurance. The six mechanisms are outlined below.

- **Financial Test of Self-Insurance** – a letter, signed by the Chief Financial Officer, which identifies the assets, liabilities and net worth of the organization. Requires verification of financial data (e.g., financial strength rating from Dun & Bradstreet or audited financial statement from a Certified Public Accountant).
- **Guarantee** - a corporate parent or affiliate assures adequate financial responsibility coverage on behalf of the owner/operator (i.e., a guarantor satisfies the financial test of self-insurance)
- **Surety Bond** – a guarantee, issued by a licensed surety company, that it will meet financial responsibility obligations in the event the owner/operator is unable to perform the necessary cleanup activities or pay a third party to perform the activity.
- **Trust Agreement** - monies covering an owner/operator’s financial responsibility requirements are held and administered by a regulated trustee.
- **Letter of Credit** - promises to pay the financial responsibility amount in the event an owner/operator fails to meet financial responsibility obligations, provide the funds necessary to clean up a petroleum release, or compensate an injured third party.
- **Insurance Policy** – pollution liability policy obtained from a licensed insurer or risk retention group promising to pay for cleanup and third party liability claims; insurance may be in the form of a separate insurance policy or an endorsement (in the form of Appendix III) to an existing policy.
- **Certificate of Deposit Assignment** – the owner/operator funds a certificate of deposit for the required financial responsibility amount and cosigns an agreement with the issuing bank to assign all rights to the CD to DEQ for the duration of the financial assurance obligation.

FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS (CONT'D.)

Owners/operators may choose any one or combination of the mechanisms above to satisfy the UST financial responsibility requirements. Each mechanism requires specific appendices to the regulation to be completed in order to assure the owner/operator's eligibility to use that mechanism. In total, there are 11 appendices to the regulation and one form called the "Certification of Annual Gallonage." Each mechanism requires a certain

number of appendices to be completed in order to demonstrate the appropriate financial assurance. The exact number of appendices an owner/operator must complete will depend upon the mechanism he/she has chosen to use. For example, an owner/operator using a trust agreement is required to complete four appendices while an owner/operator using a corporate guarantee must submit a total of five. The table below identifies each mechanism and the specific appendices required for a complete financial assurance package.

Required Contents of UST Financial Responsibility Mechanisms													
	APPENDIX I Letter from CFO	APPENDIX II Guarantee	APPENDIX III Endorsement	APPENDIX IV Cert. of Insurance	APPENDIX V Bond	APPENDIX VI Letter of Credit	APPENDIX VII Trust Agreement	APPENDIX VIII Cert. of Acknowledgement	APPENDIX IX Cert. of Financial Responsibility	APPENDIX X Cert. of Valid Claim	APPENDIX XI Letter from CFO (Short Form)	APPENDIX XII CD Assignment	CERTIFICATION OF ANNUAL GALLONAGE
Self-Insurance*	•								•		•		•
Guarantee**	•	•							•		•		•
Surety Bond					•				•				•
Trust Fund							•	•	•				•
Letter of Credit						•			•				•
Insurance***			•	•					•				•
Certificate of Deposit									•			•	•
<p>* Owner/operator must complete either Appendix I or XI</p> <p>** Guarantor must complete either Appendix I or XI</p> <p>*** Owner/operator must complete either Appendix III or IV, or, if a member of a group self insurance pool, Appendix XII. Entire text of policy, including all endorsements, must be included</p> <p>Please Note: For information as to the most cost-effective means of fulfilling the financial responsibility requirements, it is strongly suggested that owners/operators call the Office of Financial Responsibility and Waste Programs for assistance. Contact info is provided below.</p>													

Each appendix required by a specific mechanism must be filled out *completely* and must be worded *identically* to the appendices in the Regulation (Some appendices require additional attachments. For example, as part of the financial test of self-insurance, owners/operators may need to include a statement from a Certified Public Accountant to verify financial data provided in the letter).

If you have any questions regarding the UST financial responsibility requirements or how to prepare the documentation, please contact Josiah Bennett at (804) 698-4205 or Carlos Martinez at (804) 698-4575 with the Office of Financial Responsibility and Waste Programs. A toll-free number is available for Virginia residents during normal business hours at (800) 592-5482. Business hours are 8:15 a.m. to 5:15 p.m. This fact sheet and all forms discussed in this fact sheet may be downloaded from the Virginia Department of Environmental Quality's Petroleum Programs website, <http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram.aspx>.